hand knowledge of the sound construction of the right of reservation from having "jumped" his National League contract during his days as a player to join The Brotherhood.

65. The voluminous correspondence of August Herrmann as Chairman of the National Commission and as President of the Cincinnati Exhibition Company, is in Crosley Stadium at the "home park" of "The Reds", and contains the records of his knowledge of the settled interpretation of the "reserve clause" of Organized Baseball as a contract to make a contract if the parties can agree.

66. Documents appertaining to the administration of Organized Baseball by the late Baseball Commissioner Kenesaw M. Landis have also reposed in the Crosley Stadium for about five years or more last past where they have been accessible to defendant, Commissioner Chandler.

67. The late Honorable Kenesaw M. Landis was made aware of the sound construction of the right of reservation [fol. 13] in the performance of his duties as a Judge of the United States Courts through litigation arising out of the "Federal League War" of 1914 and 1915.

68. Under the National Commission, the salary paid to the players in the standard contract was apportioned upon the basis of 75% for performance and 25% for the agreement of the players to abide by the right of reservation of their clubs.

69. The Federal League commenced its attempt to compete as a Major League with Organized Baseball in 1914.

70. On June 30, 1914, the United States Circuit Court of Appeals for the Sixth Circuit held upon the authority of the Ward and the Ewing cases that the new form in which the right of reservation was phrased was identical in principle with the earlier form and constitutes a contract to make a contract if the parties can agree.

71. On October 15, 1914, section 6 of the Clayton Act was passed (15 U.S.C.A. § 17, 38 Stat. 731) providing

> "The labor of a human being is not a commodity or article of commerce."

72. During the tenure of Hon. Kenesaw M. Landis as District Judge for the Northern District of Illinois, Eastern

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 23

WALTER J. KOWALSKI, PETITIONER,

vs.

ALBERT B. CHANDLER, INDIVIDUALLY AND AS COMMISSIONER OF BASEBALL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED MARCH 26, 1953

PETITION FOR CERTIORARI FILED MAY 25, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 23

WALTER J. KOWALSKI, PETITIONER,

vs.

ALBERT B. CHANDLER, INDIVIDUALLY AND AS COMMISSIONER OF BASEBALL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Record from the United States District Court for the Southern District of Ohio, Western Division	1	1
Summons	1	1
Complaint	2	1
Notice of motion	25	22
Alternative motions of George M. Trautman, individually and as president of the National Association of Professional Baseball Leagues to dismiss and to strike	26	23
Order of dismissal	29	25
Notice of appeal	31	26
Stipulation as to record	31	26
Clerk's certificate (omitted in printing)	33	
Proceedings in the U.S.C.A. for the Sixth Circuit	34	27
Argument and submission (omitted in printing)	34	
Judgment	34	27
Order dismissing the action	35	28
Clerk's certificate (omitted in printing)	38	
Order granting certiorari	39	30

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 30, 1953.

—8915

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Civil No. 2646

WALTER J. KOWALSKI, Plaintiff,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, GEORGE M. TRAUTMAN, Individually and as President of the National Association of Professional Baseball Leagues, The Cincinnati Baseball Club Company, FORD C. FRICK, Individually and as President of The National League of Professional Baseball Clubs, WILLIAM HARRIDGE, Individually and as President of The American League of Professional Baseball Clubs, and The Brooklyn National League Baseball Club, Inc., Defendants.

SUMMONS—Served June 21, 1951

To the Above Named Defendants:

You are hereby summoned and required to serve upon Maurice H. Koodish, plaintiff's attorney, whose address is 707 St. Paul Building, Cincinnati 2, Ohio, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Howard E. Parker, Clerk U. S. District Court, S.D.O.
Deputy Clerk U. S. District Court, S.D.O.

Dated: June 14, 1951.

[fol. 2] IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed June 14, 1951

Plaintiff Demands Trial by Jury

Now comes the above named plaintiff and for his separate causes of action against the defendants herein respectfully

shows, upon information and belief, unto this Honorable Court:

For Plaintiff's First Separate and Distinct Cause of Action,

1. Plaintiff is a citizen and resident of the United States and of the State of New York, and resides in the County of Bronx, in said State.

2. Plaintiff is a professional baseball player capable of holding a position upon a club in Organized Baseball.

3. Defendant, Albert B. Chandler, is Commissioner of Baseball with his office and principal place of business in Carew Tower, City of Cincinnati, County of Hamilton, State of Ohio, and is a citizen and resident of the Town of Versailles and of the Commonwealth of Kentucky.

4. Defendant, George M. Trautman, is the President of the National Association of Professional Baseball Clubs with his office and principal place of business at 720 East Broad Street, in the City of Columbus, County of Franklin, State of Ohio, and is a citizen and resident of said City, County and State.

5. Defendant, The Cincinnati Baseball Club Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business at 307 Vine Street, in the City of Cincinnati, County of Hamilton, State of Ohio.

6. Defendant, Brooklyn National League Baseball Club, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business at 215 Montague Street, Borough of Brooklyn, County of Kings, City and State of New York.

[fol. 3] 7. Defendant, Ford C. Frick, is the President of The National League of Professional Baseball Clubs (hereinafter referred to as the "National League") with his office and principal place of business at 30 Rockefeller Plaza, in the City, County and State of New York, and is a citizen and resident of the County of Westchester and of the state of New York.

8. Defendant, William Harridge, is the President of The American League of Professional Baseball Clubs (hereinafter referred to as the "American League") with his office

and principal place of business at 310 South Michigan Boulevard, in the City of Chicago, County of Cook, State of Illinois, and is a citizen and resident of said City, County and State.

9. Organized Baseball consists of the professional baseball clubs organized in leagues within the United States, the Dominion of Canada, Cuba and certain cities and towns in the Republic of Mexico.

10. Organized Baseball is governed by The New Major League Agreement, Major League Rules, Major-Minor League Rules and the National Association Agreement.

11. The National League and the American League comprise the Major Leagues of Organized Baseball.

12. The National Association of Professional Baseball Leagues comprises the Minor Leagues of Organized Baseball.

13. The National League is an unincorporated association organized in 1876 in the City, County and State of New York.

14. The American League is an unincorporated association organized in 1901 in the City of Chicago, County of Cook, State of Illinois.

15. The National Association of Professional Baseball Leagues is an unincorporated association organized in 1901 in the City of Chicago, County of Cook, State of Illinois.

[fol. 4] 16. The National League from the opening of the season of 1900 has consisted of eight clubs representing, respectively, the cities of Boston, Massachusetts, New York, N.Y., Philadephia, Pennsylvania, Pittsburgh, Pennsylvania, Cincinnati, Ohio, St. Louis, Missouri, and Brooklyn, in the Borough of Brooklyn, County of Kings, City of New York, State of New York; and each of the aforesaid clubs has been a member of the National League from the opening of the season of 1891.

17. Each of the said clubs is owned by a corporation which operates it under a franchise from the National League.

18. The American League from the opening of the season of 1903 has consisted of eight clubs representing, respectively, the cities of Boston, Massachusetts, New York, N. Y., Philadelphia, Pennsylvania, Washington, District of Columbia, Cleveland, Ohio, Detroit, Michigan, Chicago, Illinois, and St. Louis, Missouri.

19. Each of the said clubs is owned by a corporation which operates it under a franchise from the American League.

20. Organized Baseball assumed its modern form by the adoption on the part of the National League and of the American League of The National Agreement in the City of Cincinnati, Hamilton County, State of Ohio, on September 11, 1903.

21. The National Association of Professional Baseball Leagues ratified The National Agreement in October, 1903.

22. The National League and the American League have alone been recognized officially since at or about the close of the season of 1903, as the Major Leagues of Organized Baseball.

23. The circuit of the National League may not be changed without the unanimous consent of the owner of each franchise in said League.

24. The circuit of the American League may not be changed without the unanimous consent of the owner of each franchise in said League.

[fol. 5] 25. Each of the corporations operating the respective clubs in the National League and each of the corporations operating the respective clubs in the American League own or lease or otherwise control for occupancy a baseball park or "home grounds", within or adjacent to the City or portion thereof represented by said clubs.

26. The clubs in the National League and the clubs in the American League engage annually in scheduled games for profit derived by charging fixed prices for tickets of admission to each member of the public attending such games.

27. The baseball season extends approximately from mid-April until on or about the first day of October of every year; each club in the National League and each club in the American League play a schedule of 154 games including 77 on their "home grounds" and 11 on the "home grounds" of every other club in its respective league; each of the said clubs in traveling from state to state and city to city or borough to borough in the completion of its schedule transports or causes to be transported at its own expense the equipment to play the game.

28. Each "home club" is responsible for the purchase from the exclusive seller, who has its factory in the Com-

monwealth of Massachusetts, of a sufficient number of new baseballs to complete each scheduled game without the necessity for keeping any ball in play that is other than a practically perfect sphere.

29. For every scheduled game played, after first deducting and paying to the National League or the American League, respectively, a fixed percentage pursuant to pre-existing agreement, there is a further division between the "home" and visiting clubs, likewise carried out pursuant to pre-existing agreement, of the fixed percentage of the fees received by the "home" club for admission to its park; in completing the schedule for each season, state lines are systematically crossed; radio broadcasters announce "play by play" descriptions of the games over interstate net-[fol. 6] works; television carries the sights and sounds of the game across state boundaries; the seasonal rights to make these broadcasts and telecasts are sold to sponsors and radio and television companies by the clubs of the Major Leagues for large sums; that these sales include presently annually renewable options in favor of contemporary sponsors and radio and television companies or presently existing rights in favor of said sponsors and radio and television companies for immediately succeeding and future seasons.

30. Radio and television, the newspaper publicity and the other avenues and channels of communication used, attendant upon, necessary for and related to the playing of Major League Baseball and to the training and preparation for said playing of the season's schedules, which preparation includes extensive interstate late winter and early spring training schedules of pre-season games; the purchase by the clubs and leagues of essential equipment and its transport and that of the requisite personnel by the clubs and leagues for the training and preparation for, and in the fulfillment of, their schedules and of their respective contracts with sponsors and radio and television companies and others for the broadcasting and re-broadcasting and telecasting, in whole or in part, of the scheduled, pre-season and post-season games, cause those administering and playing the games of Organized Baseball to be engaged in interstate commerce by the derivation of a substantial portion of their income from such source.

31. The "Dream Game" played annually in July between

teams made up respectively of "star" players selected from the members of each league yields to Organized Baseball a larger amount of income for the broadcasting and telecasting rights than is derived from fees paid by the public for tickets of admission.

32. In or about the early part of October, the respective winners of the race or pennant in the National League and the American League play annually a "World Series" to [fol. 7] decide the baseball championship for that season; the sale of the broadcasting and telecasting rights yields to Organized Baseball from the "World Series" a substantial portion of its income; and the sale of broadcasting and telecasting rights in the respective sums of $175,000 and $800,000 for the 1950 World Series produced $975,000; a larger portion of the $1,928,669.03, the total receipts, than was obtained from the $953,669.03; the sum received from fees paid by the public for tickets of admission or additional sources.

33. The annual schedules of the Minor Leagues are similar to the Major League schedules; most of the Minor Leagues require interstate transportation upon a systematic scale to fulfill said schedules; several of the Minor Leagues hold post season series, inter-league and intra-league in character, that are comparable to the World Series; and many of the Minor League Clubs and Leagues have entered into contracts for the broadcasting and telecasting of their scheduled games and post-season series.

34. Organized Baseball maintains a monopoly in interstate and foreign commerce over the exhibition of professional baseball games for profit through its exclusive control over the market for professional players.

35. The players are bound to the respective clubs employing them by uniform or standard contracts.

36. These contracts contain a provision conferring upon the employing club an option for the player's services upon the expiration of the period of his employment.

37. This option or "reserve clause" has been progressively widened in scope over a period of more than seventy years since the inception of said clause by its application to five players for a National League Club in 1879.

38. The periodic extensions of the "reserve clause" and of the related restrictive clauses in the uniform or standard

contracts have been preceded or accompanied by ostensible, [fol. 8] practical or express disclaimers on the part of the representatives of Organized Baseball that their contracts violated federal and state statutory law, the principles of equity and of the common law, or that such contracts had the oppressive effects complained of by suitors in court, or such like effects as were ascribed to the provisions of these contracts by the players, or professional sporting writers or other critics or commentors.

39. The "reserve clause" of Organized Baseball was widened to apply to 11 players at or before the commencement of the season of 1883; and was widened to 14 players, upon the termination of that season.

40. In 1882, the original and now long defunct American Association had been established as a second Major League and was recognized as such by the National League during the off-season of 1882 to 1883.

41. In 1885, a benevolent organization, The Brotherhood, was formed by the players of these Major Leagues under the leadership of John Montgomery Ward, a player of unique ability and a lawyer of standing at the Bar of the City of New York during his subsequent career.

42. Organized Baseball in 1887 met the demands of The Brotherhood by setting forth the "reserve clause" in the uniform contract instead of incorporating it therein by reference as had previously been done.

43. The uniform contract contained likewise a "ten day" release or termination clause and an assignment or involuntary transfer clause.

44. During the off-season of 1888 to 1889 while John Montgomery Ward was on a world tour of baseball clubs, Organized Baseball applied the classification rule to its players whereby they were graded in ability from A to E with salaries ranging from $2,500 down to $1,500.

45. The "reserve clause," the "ten day" release clause, the involuntary transfer clause and the maximum salary limitation have remained cardinal features of the vast majority of baseball players' contracts up to, and including, the present day.

[fol. 9] 46. Upon the return of John Montgomery Ward from abroad, plans were instituted by the players for the formation in 1890 of a League on their own account.

47. In a published interview in 1887, John Montgomery Ward had stated that the reserve clause was essential for investors in Baseball, and in or around April 1889, he signed a supplemental agreement to abide by his club's right of reservation in consideration of the assurance of a salary of $3,000 as a minimum for 1890.

48. After the close of the season of 1889, The Brotherhood still under the leadership of John Montgomery Ward issued a Manifesto to the public under date of November 4, describing the reasons for setting up a league by and on behalf of the players.

49. In answering this announcement on November 21, 1889, the National League placed a contemporaneous interpretation upon the involuntary transfer clause in paragraph 15 of the standard contract in the original form subjected to judicial construction, admitting that this clause was ineffective to support the assignment of a player's contract without his consent except in cases of disbanding or retiring clubs.

50. The National League by the foregoing construction of paragraph 15 of the uniform contract, a construction published less than seven months prior to the enactment on July 2, 1890 of the Sherman Anti-Trust Law (15 U.S.C.A. 1; 26 Stat. 209) endeavored to meet the contention advanced in the Manifesto of November 4, 1889 by The Brotherhood that Organized Baseball was a trust; said contention read:

> "Players have been bought, sold and exchanged as though they were sheep instead of American citizens. 'Reservation' became for them another name for property right in the player. By a combination among themselves, stronger than the strongest trust, they were able to enforce the most arbitrary measures, and the [fol. 10] player had either to submit or get out of the profession in which he had spent years in attaining a proficiency. Even the disbandment and retirement of a club did not free the players from the Octopus clutch, for they were then peddled around to the highest bidder."

51. During the six months' period prior to the passage of the Sherman Anti-Trust Act, the courts without excep-

tion denied the applications for injunctions brought by the clubs of Organized Baseball to enforce specifically their "right of reservation" to the players who joined The Brotherhood.

52. Within this period in one of these proceedings it was held in January 1890, at the Supreme Court for the State and County of New York that the New York National League Club could not enjoin its player, John Montgomery Ward; that while the "reserve clause" expressed perfectly the terms of the option to hold him, it was too indefinite for enforcement; that the supplemental agreement providing a minimum salary of $3,000 for 1890 did not cure this defect; and that the ten day release clause deprived the contract of mutuality.

53. On January 25, 1890, Judge Wallace, sitting in the United States Circuit Court for the Southern District of New York, decided in the case of the New York National League Club against Ewing, a player of indubitably unique ability, that the reserve clause gives nothing more or less than a prior and exclusive right to the employing club as against the other clubs in Organized Baseball, to enter into a contract securing its players' services for the next season or seasons; it is a contract to make a contract if the parties can agree.

54. In accordance with this construction of the "reserve clause", while still limited to 14 players for each club by the terms of the uniform contract and with no power in Organized Baseball to assign or cause the involuntary transfer of the player unless his club disbanded or retired, the players [fol. 11] who joined The Brotherhood were reinstated when their league collapsed after one season.

55. In 1900 and for a season or two prior thereto, the National League again imposed a salary limitation upon the players; the maximum at this interval being set at $2,400.

56. In the establishment of the American League as a rival Major League in 1901, its clubs obtained the great majority of their players from the National League in disregard of its right of reservation.

57. During the season of 1902, Napoleon Lajoie, the great and unquestionably unique second baseman of the Philadelphia Athletics of the American League, was enjoined by the

[fol. 35] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 11,624

WALTER J. KOWALSKI, Appellant,

v.

ALBERT B. CHANDLER, individually and as Commissioner of Baseball, GEORGE M. TRAUTMAN, individually and as President of the National Association of Professional Baseball Leagues, and THE CINCINNATI BASEBALL CLUB COMPANY, Appellees.

ORDER— Filed February 20, 1953

Before ALLEN, McALLISTER, and MILLER, Circuit Judges.

Appellant, a professional baseball player, brought suit in the district court to recover treble damages by reason of the alleged violation by appellees of Sections 1, 2, and 3 of the Sherman Act, 26 Stat. 209, 15 U. S. C. A., Sections 1, 2, and 3, and under Section 4 of the Clayton Act, 38 Stat. 731, 15 U. S. C. A., Section 15. Appellant's action is based upon the claim that appellees, by a monopoly over trade and commerce, exercised through professional "organized baseball," have, by means of players' contracts and agreements among the several clubs in the various leagues, deprived appellant of the reasonable value of his services and his opportunities for professional promotion.

On motion of appellees, the district court dismissed the complaint on the ground that it failed to allege facts which are essential to establish the jurisdiction of the court, and failed to state a cause of action under the provisions of the above named statutes, and that the court, accordingly, [fol. 36] had no jurisdiction of the subject matter of the suit.

The issue presented is whether baseball is, or is not trade or commerce, and whether the structure known as "organized baseball" is engaged in trade or commerce within the meaning of those words as used in the Sherman and Clayton Acts.

The controlling authority is the decision of the United States Supreme Court in *Federal Baseball Club* v. *Na-*

Division, "No. 373 in equity" came before him for trial in January 1915.

73. The Federal League was the plaintiff in this anti-trust action brought against the representatives of Organized baseball for their alleged interference with said plaintiff's efforts to establish a third Major League.

74. The complaint alleged among other matters that the right of reservation monopolized the player market.

75. The Cincinnati Exhibition Company was an intervening defendant, and the answer signed on its behalf by August Herrmann as its President, denied that the "reserve clause" had any legal effect or that it was used as a threat against the players of Organized Baseball to prevent them from signing contracts with the Federal League.

[fol. 14] 76. This cause was tried for four days before Judge Landis and was settled before he rendered his decision pursuant to a consent decree entered before him without prejudice to the rights of the Baltimore Club of the former and then defunct Federal League; and with full protection and reinstatement for the Major League players, who had either "jumped" the "reserve" or had broken their contracts.

77. The Baltimore Club thereafter commenced an action of its own under the Sherman and Clayton Acts in September, 1917, against the representatives of Organized Baseball and others, alleging that the right of reservation monopolized the player market.

78. Upon the trial of this action in the early spring of 1919, August Herrmann, as Chairman of The National Commission, Ban Johnson and John A. Heydler, who was at that time the President of the National League, testified that the "reserve clause" was used only for internal protection and was ineffective to prevent players from joining an independent league or to blacklist them for doing so.

79. Article VI, section 4 of The National Agreement prohibited farming by Major League Clubs; that is, the ownership by them of minor league clubs; and testimony offered by the plaintiff, the Baltimore Club, that such farming was prohibited by Organized Baseball as given upon the trial, was not contradicted by the defendants.

80. Defendants introduced in evidence upon the trial doc-

tional League, 259 U. S. 200, in which it was clearly held that organized baseball was not trade or commerce. The facts with respect to the sale of broadcasting rights for radio and television in this case, which are herein emphasized by appellant as distinguishing this case from that cited above, are not different in any essential form from the sale of the rights of description of games over telegraph wires in the *Federal Baseball Club* case, and there appears no reasonable basis for distinguishing that case from the one before us. It is the duty of this court, in its determinations, to follow the decisions of the Supreme Court, and we are not persuaded to disregard the above mentioned authority on the speculation that the Supreme Court may change its decision in this regard in the future. With respect to the controversy before us, the language of Judge Chase in *Gardella* v. *Chandler*, 172 F. 2d 402, 405 (C.A. 2), is apposite and embodies our view in determining the issue herein: "In dealing with such a unique aggregate as organized baseball and with a decision in respect to it which seems to be directly in point on the facts, we should not be astute in seeking to anticipate that the court which has the power to do so will change that decision. To do so would not only be an unwarranted attempt to usurp the authority of that court but would make its task in general much more difficult since it would lead to a constant alteration in the lower courts of its decisions on specific fact situations in the light of what would appear to be differing rules stated in the course of deciding later cases on different facts." See to the same effect, *Toolson* v. *New York Yankees*, 101 F. Supp. 93 (D. C. Cal.), aff. 200 F. 2d 198 (C.A. 9).

[fol. 37]

The order of the district court dismissing the action is affirmed.

Approved for entry:

(S.) Thomas F. McAllister, Circuit Judge.

[fol. 38] Clerk's Certificate to forgoing transcript omitted in printing.

umentary proof that the member of The National Commission had invited criticism in regard to the correctness of their rulings on players' rights.

81. This cause did not reach the Supreme Court of the United States for argument until April 19, 1922; by which time, Judge Kenesaw M. Landis had retired from the Bench following his election as Baseball Commissioner on January 12, 1921, under the New Major League Agreement adopted likewise on said date to replace The National Agreement.

[fol. 15] 82. In the brief submitted by the United States Senator from Pennsylvania, George Wharton Pepper, on behalf of Organized Baseball as defendants in error upon the Baltimore Federal Club appeal, it was admitted that the right of reservation is a moral and not a legal obligation; and, further, that the standard contract was unenforceable by the weight of authority through lack of mutuality owing to the presence therein of the ten day release clause.

83. The New Major League Agreement had not prohibited "farming", and despite the persistent opposition of Hon. Kenesaw M. Landis as Baseball Commissioner, the "farm system" of Organized Baseball grew up, beginning in or about 1922.

84. For these "Farms", maximum limitations for salaries are the rule.

85. On May 29, 1922, when Mr. Justice Holmes in declaring for the Supreme Court in the Baltimore Federal Club case that Baseball was not interstate commerce; and that the Leagues induce free persons to cross state lines, the interrelations created by the reserve clause and the farm systems of Organized Baseball were not on the record before the Court; and radio and television had as yet no connection with the game.

86. The testimony of Commissioner Herrmann, Ban Johnson and John A. Heydler that the "reserve clause" was not part of the contract had obviated the claim set forth by The Brotherhood on November 4, 1889 that the players were disposed of as property and had also eliminated the applicability of section 6 of the Clayton Act (15 U.S.C.A. § 17; 38 Stat. 731) and of intervening opinions of the State Courts of New York holding the players subject to The National

Agreement were in the category of property and were the subject of purchase and sale as such.

87. The involuntary transfer of a person who is bound to render personal service is peonage under the Constitution of the State of Missouri; a baseball contract was char- [fol. 16] acterized as imposing involuntary servitude by a Missouri State Court in denying an application for an injunction against a National League player in 1902.

88. The "Farm System" of Organized Baseball was inaugurated by Branch Rickey while he was manager of the St. Louis National League Club in or about 1922.

89. It proved a particularly fertile field for the "covering up" of player whom the St. Louis club wished to hold, in violation of the regulations of Organized Baseball, and Commissioner Landis declared 127 of them "free agents" in 1938 in the Cedar Rapids case.

90. With notice of the record of Branch Rickey in relation to farms, of the steadfast opposition of Commissioner Landis to his practices and to the "farms" in general, and of the New York State Court decision holding that Organized Baseball is a common law monopoly, defendant, Brooklyn National League Baseball Club, Inc., engaged Branch Rickey as President and General Manager on or about October 29, 1942.

91. During his operation as the directing head of the club, large sums were derived by said defendant through the sales of players from its farm clubs and from "The Dodgers."

92. The percentage of players in the Major Leagues capable of becoming members of Major League clubs is small.

93. The great majority of these players are deprived of the reasonable value of the compensation to which they are entitled upon principles of quasi-contract by the salary and other limitations imposed unlawfully upon them.

94. There are three AAA Leagues in Organized Baseball; these have no maximum limitation for salaries and no minimum; and the player is unprotected against a reduction of more than 25% in his salary for the next season when he must abide by the right of reservation.

95. Of the two AA Leagues, the Southern Association places its players in the same position as are those in the

AAA Leagues; the Texas League has a salary limitation of [fol. 17] $10,000 per month for 20 players, including a playing manager.

96. Of the four A Leagues, the Central League has a salary limitation of $5,800 per month for 19 players; the South Atlantic (or Sally League) has a limitation of $5,400 for 18; the Eastern and Western Leagues a limitation of $5,700 for 19.

97. Of the nine B Leagues, the salary limitation is $4,000 per month for 17 players.

98. Of the thirteen C Leagues, the salary limitation is $3,400 for 17 players.

99. Of the nineteen D Leagues, the salary limitation is $2,600 for 17 players.

100. Salaries in the Minor Leagues are paid upon the basis of five months for a season.

101. In the above-named leagues with salary limitations, there are, and have been for many years last past the combination of this limitation joined to a binding right of reservation, a "ten day" release clause, and unqualified rights by the "farm club" and by its Major League or higher Minor League owner to the involuntary transfer of the player's services.

102. Except for the absence of a maximum salary limitation, the players on the clubs of the three "AAA" Leagues, and of the "AA" Southern Assn., are likewise subject to the binding right of reservation, a "ten day" release clause and an involuntary transfer clause.

103. A player on an "AAA" club who refuses to sign his contract with said club pursuant to its right of reservation for the next season may not play without the permission of his club in semi-professional or independent baseball; and said restriction applies universally to a player in Organized Baseball who refuses to abide by the right of reservation.

104. Defendant Chandler before the commencement of the season of 1950, induced a player of unique ability, Albert J. Widmar, not to attack the validity of the right of reservation in the "AAA" and Major League contracts and of the in- [fol. 18] voluntary transfer and related clauses in the standard contracts of the Major and Minor Leagues by having the St. Louis American League Club pay him a salary of

$10,000 for the year, instead of the sum of $5,000 reportedly offered to him.

105. Defendant Chandler thereby reverted to the policy pursued by Organized Baseball between the rendition of the opinion in the Federal Club case in 1922 and 1947, of refraining from appellate litigation upon any question affecting the standard contract generally, and the validity of the reserve clause and of the "farm systems" in particular.

106. In order to maintain the monopoly of Organized Baseball over the market in professional baseball players, defendant Chandler had blacklisted several of them for exercising their legal rights by joining the Mexican League in 1946 when they had not signed the contracts offered to them by their clubs in Organized Baseball.

107. Before any question was raised in litigation as to the validity of his action, Organized Baseball in an effort to prevent a repetition of the exercise of such legal rights by its Major League players re-drafted the right of reservation in their standard contract.

108. This re-drafted clause approximates the phraseology of the Philadelphia National League Club contract of in and about the year 1900; the form of contract, that was upheld as legally and equitably binding within the Commonwealth of Pennsylvania alone, against Napoleon Lajoie, a player of unquestionably unique ability, whose salary in the event he had abided by the right of reservation would have been $2,400, the maximum allowed by the National League.

109. The standard Major League contract now in force, contains a stipulation that the player is unique; a stipulation, which is an invalid derogation of the jurisdiction of the Supreme Court, the court of general jurisdiction, of the State of New York.

[fol. 19] 110. This standard Major League contract contains a stipulation that a Major League player is assured of a minimum salary of $5,000. per annum; a stipulation that is unenforceable under the law of the State of New York; the $3,000. minimum provided for in Ward's contract if he abided by the reserve in 1890 being far greater in terms of current purchasing power and in proportion to contemporary Major League salaries.

111. By adhering to this new form of contract, defendant,

Brooklyn National League Baseball Club, Inc., in violation of the laws of the State of New York, has adhered to the policy of defendant Chandler of according to the reserve clause the effect of monopolizing the market for professional baseball players upon a world-wide scale.

112. Defendant Chandler did not announce that the "jumpers" of the "reserve clause" and of the standard contract in joining the clubs of the Mexican League in 1946 might be reinstated in Organized Baseball, until on or about June 5, 1949.

113. Defendant Chandler's announcement to this effect came on or about the third day after the United States Court of Appeals for the Second Circuit had unanimously left the question open for decision upon the trial as to the validity of the "reserve clause" under the anti-trust laws upon the appeal of contract "jumpers" for a preliminary injunction.

114. Between January 1948 and the time of this announcement, defendant Chandler had negotiated and entered into an agreement with representatives of the Mexican League whereby Organized Baseball and the Mexican League undertook to respect the non-legal right of reservation in one another's contracts.

115. This agreement produces a regional division between former competitors in violation of sections 1 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A. §§ 1 and 3; 26 Stat. 209).

[fol. 20] 116. This agreement violated section 2 of the Sherman Act (15 U. S. C. A. § 2; 26 Stat. 209) by monopolizing the player market upon an international scale and by affording the means of achieving a world-wide monopoly by ascribing legal sanction to the non-legal or moral or honorary right of reservation.

117. This agreement violated the privileges and immunities clause of section 1 of the 14th Amendment of the Constitution of the United States and of the fundamental freedom guaranteed by Chapter IX Article 55 of the Charter of the United Nations.

118. Defendant Chandler has implemented this agreement through the subsequent inclusion within Organized Baseball of the Provincial League of the Province of Quebec, Dominion of Canada.

119. The ability of Major League players to bargain for

salaries is further unlawfully curtailed by the monopolistic character of the circuits that are based upon the census figures of 1890 and 1900.

120. The inability of the National League to alter its cities without unanimous consent is peculiarly injurious to the rights of the players to bargain through the predominance of the cities along the rivers in contradistinction to the cities along the Great Lakes which have had the benefit of the subsequent growth of the motor vehicle industry.

121. Organized Baseball violates section 6 of the Clayton Act (15 U. S. C. A. § 17; 38 Stat. 731) by dealing with the players as property and treating their labor as a commodity.

122. Its contracts through their origin under The National Agreement of 1903 are interpreted in practice in accordance with the then juridical philosophy, that antedated the recognition during the next decade of Workmen's Compensation Laws, in imposing upon the player the risk of injury as though the common law doctrines of contributory negligence, assumption of risk and the fellow servant rule were still controlling.

[fol. 21] 123. Plaintiff during his minority was signed to a standard Minor League contract at the end of the season of 1942 by the Lockport, New York Club of the "D" Pony League.

124. Plaintiff was in the military service of the United States for the three succeeding years.

125. Plaintiff played for Lockport in 1946 for no more than $150 per month.

126. The assignment of plaintiff's contract was thereafter purchased by defendant, Brooklyn National League Baseball Club, Inc., and plaintiff played in its organization for the season of 1947 with the Kingston, New York Club in the "D" North Atlantic League for no more than $150 per month.

127. For the season of 1948, plaintiff's contract was assigned by the Brooklyn organization to the Pueblo, Colorado Club of the "A" Western League.

128. The Pueblo Club forwarded a proposed contract to plaintiff for the season of 1948 and he returned it with a request for a salary of approximately $300 per month.

129. The answer upon the official letterhead of the Pueblo Club reads as follows:

"Pueblo Baseball Club, Inc.
Member of Western Professional League
Chamber of Commerce Building
Pueblo, Colorado

Feb. 11, 1948.

Mr. Walter Kowalski
5812 6th Ave.,
Brooklyn, N. Y.

DEAR MR. KOWALSKI:

As you know your contract was assigned to Pueblo for 1948. Enclosed find your contracts. We have given you two salaries, if you make the Pueblo Club, you will be paid the amount shown on page three of the [fol. 22] contract under clause as follows: 'In the event player, Kowalski, is a playing member of the Pueblo Baseball Club on May 22nd, 1948, he is to receive a monthly salary of $275.00, retroactive to opening day.' Otherwise, you will be paid $225.00 a month.

I have a letter from Mr. Thompson of the Brooklyn organization stating that you are to attend the Vero Beach camp starting March 10th. He also states that all players are to be advised that no unsigned men will be allowed to report to training camp.

If the contract is satisfactory you are to sign all four copies on pages one, three and four, and return all four copies by registered mail. We will then return one to you executed by the Pueblo Baseball Club, as well as the date of signing.

Hoping to see you this spring as I have had some favorable reports on you, and feel that you will make the Pueblo Club.

Very truly yours, Pueblo Baseball Club, Inc.,
(Sgd.) O. M. Hobbs, Gen. Mgr.

Enc.
OMH/v

P. S. If you have a picture of yourself in uniform, we would like to have it for a cut for our local newspapers."

130. Plaintiff reported to the Training Camp at Vero Beach of "The Dodgers", and was assigned to the Asheville, North Carolina Club, in the "B" Tri-State League.

131. Plaintiff was forced to sign the contract of the Pueblo Club in order to play for Asheville; the contractual arrangements with this latter Club eventuating in an agree-
[fol. 23] ment to accept $225 per month; and $250 per month, if he remained with said Club.

132. Plaintiff, shortly thereafter, wrenched his ankle while playing in the outfield.

133. Plaintiff, before recovering from this injury had his contract assigned by the Brooklyn organization to its Three Rivers, Quebec Club, in the Dominion of Canada in the "C" Canadian-American League.

134. Plaintiff had a batting average for this season of .352 or thereabout and his salary was $235 per month.

135. Plaintiff's contract was thereafter assigned by the Brooklyn Organization to the Greenville, South Carolina Club of the "A" South Atlantic (Sally) League; with which Club he signed a contract for $300. per month.

136. Plaintiff's name was kept off the unrestricted draft list for 1947 and 1948 by the respective assignments to Pueblo for 1948 and to Greenville for 1949; and he could only have been selected at the end of the 1947 and 1948 seasons, and thus have had his connection with the Brooklyn organization terminated, by a club in the Major Leagues or in one of the three "AAA" Leagues or two "AA" Leagues.

137. Plaintiff was merely permitted by the Greenville Club to play in spring practice or squad games and his contract was then assigned by the Brooklyn organization to Newport News, Virginia, in the "B" Piedmont League, where he batted around .280 and knocked 15 home runs his salary was $265. per month for the year, instead of the $300. for which his contract with the Greenville Club had provided; and plaintiff's request for an increase in salary for 1950 was denied by the Newport News Club.

138. Plaintiff reported to Vero Beach in 1950 as a member of the Newport News Club under a signed contract for $265. per month; he was assigned conditionally by the Brooklyn organization to the Greenville Club of the Sally League; after playing with it for 16 or 17 early season games, plaintiff was assigned by the Brooklyn organization

[fol. 24] to the Lancaster, Pennsylvania, Club of the "B" Interstate League, where he earned $265 per month.

139. Plaintiff's contract was assigned in June 1950, pursuant to directions from the Brooklyn organization to a club beyond its control in Johnstown, Pennsylvania, in the "C" Middle Atlantic League, where he earned $265. per month.

140. Plaintiff's contract was acquired for 1951 by the independent Newcastle Club of the same "C" League and he is hitting around .380, and draws a salary of $265. per month.

141. Plaintiff was never given an opportunity to play for a full season with an "A" club and to benefit by constant association with "faster company" after his salary dispute with the Pueblo Club; he was discouraged during 1949 by the ability of the Brooklyn organization to keep him off the unrestricted draft list during the two preceding seasons; and subsequently, by the published criticism from representatives of defendant, Brooklyn National League Baseball Club, Inc., about the time that plaintiff's name appeared on the unrestricted draft list in the autumn of 1949, that he was a poor fielder.

142. Upon review of plaintiff's case by defendant Trautman and by the Executive Committee of the National Association of Professional Baseball Leagues, nothing was found violative of the rules of Organized Baseball.

143. Upon appeal to defendant Chandler, he reached the same conclusion; and thereby gave his sanction to the monopoly within a monopoly which the "Farm System" has produced.

144. Defendants have employed the uniform contract to deprive plaintiff of the reasonable value of his services and with his opportunities for professional promotion contrary to sections 1, 2 and 3 of the Sherman Anti-Trust Act (16 U. S. C. A. §§ 1, 2 and 3) and sections 4 and 6 of the Clayton Act (15 U. S. C. A. §§ 15 and 17).

[fol. 25] For Plaintiff's Second Separate and Distinct Cause of Action

145. Plaintiff, to save repetition, repeats and realleges each and every allegation contained in paragraphs "1" to "143" inclusive, of this complaint with the same force and

effect as though the same were here again fully and at length set out.

146. Defendants have permitted the "Farm System" to operate as a monopoly within a monopoly to the unjust enrichment of defendant Brooklyn National League Baseball Club from the employment of plaintiff for three years and upward under the otherwise unlawful Minor League standard contract of Organized Baseball.

Wherefore, plaintiff brings this action to recover damages in the sum of $50,000, for the deprivation of his right to the reasonable value of his services, to his opportunities for promotion and for the unjust enrichment derived therefrom by the operation of the "farm system" in violation of sections 1, 2 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A. §§ 1, 2 and 3) and of Sections 4 and 6 of the Clayton Act (15 U. S. C. A. §§ 15 and 17), and plaintiff demands three-fold damages in the sum of $150,000.

Maurice H. Koodish, Attorney for Plaintiff, 707 St. Paul Building, Cincinnati 2, Ohio.

In United States District Court

Notice of Motion—Filed November 5, 1951

To Maurice H. Koodish, Attorney for Plaintiff, 707 St. Paul Building, Cincinnati 2, Ohio.

Please take notice that the undersigned will bring the annexed motions on for hearing before this Court at its [fol. 26] Court Room, United States Courts and Post Office Building, City of Cincinnati, Ohio on the 26th day of November, 1951 at two o'clock in the afternoon of that day or as soon thereafter as counsel can be heard.

Walter M. Shohl, Office and Post Office Address, 1218 Union Central Building, Cincinnati, Ohio; Herman R. Tingley, Office and Post Office Address, 145 North High Street, Columbus, Ohio, Attorneys for defendant, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues.

In United States District Court

Alternative Motions of George M. Trautman, Individually and as President of the National Association of Professional Baseball Leagues to Dismiss and to Strike —Filed November 5, 1951

Now comes the defendant, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues by his attorneys and moves the Court as follows:

Motion No. I

To dismiss the action and each alleged cause of action set out in the complaint on the ground that the Court lacks jurisdiction over the subject matter of the causes of action.

[fol. 27]

Motion No. II

To dismiss the action and each alleged cause of action set out in the complaint because the complaint and each alleged cause of action therein fails to state a claim against said defendants or any of them upon which relief can be granted.

Motion No. III

If motions Nos. I and II be denied, then to strike from the complaint—

1. Each and every allegation contained in paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 38, 40, 41, 42, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 93, 103, 104, 105, 106, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, and 146.

2. The underlined language in the following quotation of paragraph 83 of the complaint:

> "The New Major League Agreement had not prohibited 'farming', *and despite the persistent opposition of Hon. Kenesaw M. Landis as Baseball Commissioner*, the 'farm system' of Organized Baseball grew up, beginning in or about 1922."

3. The underlined language in the following quotation of paragraph 90 of the complaint:

> "With notice of the record of Branch Rickey in relation to farms, *of the steadfast opposition of Commissioner Landis to his practices and to the 'farms' in general, and of the New York State Court decision holding that Organized Baseball is a common monopoly,* defendant, Brooklyn National League Baseball Club, Inc. engaged Branch Rickey as President and General Manager on or about October 29, 1942.

[fol. 28] 4. The underlined language in the following quotation of paragraph 107 of the complaint:

> *"Before any question was raised in litigation as to the validity of his action,* Organized Baseball *in an effort to prevent a repetition of the exercise of such legal rights by its Major League players* redrafted the right of reservation in their standard contract."

5. The underlined language in the following quotation of paragraph 143 of the complaint:

> "Upon appeal to defendant Chandler, he reached the same conclusion; *and thereby gave his sanction to the monopoly within a monopoly which the 'Farm System' has produced."*

The grounds of this motion are:

(a) Each of said allegations is redundant, immaterial and impertinent within the meaning of F.R.C.P. 12 (f) and prejudicial to the defendants.

Each of said allegations grossly violates F.R.C.P. 8 (a)(2), requiring the pleader to set forth "a short and plain statement of the claim" for relief, and F.R.C.P. 8 (e)(1), providing that "each averment of a pleading shall be simple, concise and direct", and in these respects is prejudicial to the defendants.

Walter M. Shohl, Office and Post Office Address, 1218 Union Central Building, Cincinnati, Ohio.
Herman R. Tingley, Office and Post Office Address, 145 North High Street, Columbus, Ohio.

[fol. 29] (Identical Notices of Motions and Alternative Motions to Dismiss and to Strike were filed by Albert B. Chandler, individually and as Commissioner of Baseball and The Cincinnati Baseball Club Company.) The defendants making these motions were the only ones served in this case.

IN UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL—Filed January 25, 1952

This cause came on to be heard on December 5, 1951 on the separate motions of each of the defendants served in the action, to wit, Albert B. Chandler, individually and as Commissioner of Baseball, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues, and The Cincinnati Baseball Company, to dismiss the action on the ground that the Court lacks jurisdiction over the subject matter and to dismiss the action because the complaint fails to state a claim upon which relief can be granted; or, if such motions to dismiss be denied, to strike from the complaint certain enumerated paragraphs for violation of Rules 12(f), 8(a)(2) and 8(e)(1) of the Federal Rules of Civil Procedure; and was argued by counsel and submitted. Upon consideration of the complaint and of the arguments and authorities submitted by counsel, the Court finds and concludes:

1. That the complaint fails to allege facts which are essential to establishing the jurisdiction of the Court and to the statement of a claim under and within the provisions of the Sherman Act, 26 Stat. 209, U.S.C. 15 §§ 1, 2 and 3, and the Clayton Act, 38 Stat. 741, U.S.C. 15.

2. That the Court has no jurisdiction of the subject matter of the action.

[fol. 30] 3. That having decided to dismiss the action on the ground that the Court lacks jurisdiction over the subject matter, the Court does not now pass upon or decide the other motions addressed to the complaint by each of the defendants.

Now, therefore, it is

Ordered, adjudged and decreed that the action be and the same hereby is dismissed against all of the defendants on

the ground that the Court does not have jurisdiction of the subject matter of the action, with costs to defendants, to all of which the plaintiff excepts.

John H. Druffel, U. S. D. J.; OK, Walter M. Shohl, Attorney for Defendants; OK, Frederic A. Johnson, Attorney for Plaintiff.

[fol. 31] In United States District Court

Notice of Appeal—Filed February 20, 1952

Sirs:

Notice is hereby given that Walter J. Kowalski, the plaintiff above named, hereby appeals to the Court of Appeals for the Sixth Circuit from the order and judgment made and entered herein and filed in the office of the Clerk of this Court on the 25th day of January, 1952, dismissing the complaint herein for want of jurisdiction, and from each and every part thereof. Dated: Cincinnati, Ohio, February 20, 1952.

Maurice H. Koodish, Attorney for Plaintiff-Appellant, Offices & P. O. Address, 707 St. Paul Bldg., Cincinnati 2, Ohio.

To:

Clerk, United States District Court, Southern District of Ohio, Western Division.

Dinsmore, Shohl, Sawyer & Dinsmore, Esqs., Attorneys for Defendants, Union Central Bldg., Cincinnati, Ohio.

In United States District Court

Stipulation of Record—Filed April 1, 1952

It is hereby stipulated and agreed, pursuant to Rule 75(f) of the Federal Rules of Civil Procedure, that the following are designated as the parts of the record to be included in the record on appeal:

1. Caption.
2. Summons.
3. Complaint.

[fol. 32] STIPULATION OF RECORD

4. Notice of Motions and Alternative Motions to Dismiss and to Strike of George M. Trautman, individually and as President of National Association of Professional Baseball Leagues. (Identical Notices of Motions and Alternative Motions to Dismiss and to Strike were filed by Albert B. Chandler, individually and as Commissioner of Baseball and The Cincinnati Baseball Club Company.) The defendants making these motions were the only ones served in this case.

5. Order and Judgment appealed from.

6. Notice of Appeal.

7. This Stipulation. (Dated Cincinnati, Ohio, April 1, 1952).

Frederic A. Johnson, Attorney for Plaintiff-Appellant. Walter M. Shohl, Dinsmore, Shohl, Sawyer & Dinsmore, Attorneys for Defendant-Appellees.

[fol. 33] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 34] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ARGUMENT AND SUBMISSION—February 9, 1953

(omitted in printing)

[fol. 39] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 668

WALTER J. KOWALSKI, Petitioner,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, et al.

ORDER ALLOWING CERTIORARI—Filed May 25, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.